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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,603	12/28/2001	Robert M. English	112056-0036	3815

.24267 7590 04/29/2005

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BOSTON, MA 02210

EXAMINER

KERVEROS, JAMES C

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/035,603

Applicant(s)

ENGLISH ET AL.

Examiner

JAMES C. KERVEROS

Art Unit

2133

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 11-16, 19-23, 28, 29, 43 and 44.
Claim(s) objected to: 1-10, 17-19, 24-27, 30-42 and 45-58.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: 59.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.


GUY LAMARRE
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed on 4/27/2005 with the Amendment are not persuasive, for the reasons as set forth in the Final Office Action mailed 1/27/2005.

Claims 1-10, 17-19, 24-27, 30-42, 45-58 are still rejected under 35 U.S.C. 102(b) as being anticipated by Han et al. (US 6158017), as set forth in the Final Office Action.

Claims 11-16, 19-23, 28, 29, 43 and 44 are allowed, as set forth in the Final Office Action.

Claim 59 is withdrawn from consideration as being directed to a non-elected invention.

In the Final Office Action, claim 59 was withdrawn from consideration as being directed to a non-elected invention, since applicant has received an action on the merits for the originally presented invention of claims 1-58.

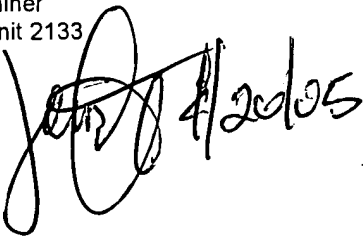
Applicant's traversal of the restriction is on the grounds that claim 59 contains the same or similar subject matter as independent claim 30, and therefore examination of claim 59 would not necessitate further searching by the Examiner. This is not found persuasive because claim 59 is directed to Electromagnetic signals propagating on a computer network, for carrying instructions for execution on a processor for the practice of a method for correcting failures in a storage array, while claim 30 is directed to a method for correcting double failures in a storage array.

The requirement is still deemed proper and is therefore made FINAL.

JAMES C KERVEROS

Examiner

Art Unit 2133

A handwritten signature in black ink, appearing to read "John" followed by a large, stylized flourish, and the date "4/20/05" written to the right.A handwritten signature in black ink, consisting of a stylized "G" followed by a horizontal line.

GUY LAMARRE
PRIMARY EXAMINER